Mr. Subba Aiyar then moved that the Bill be referred to a Select Committee consisting of Messrs. Chacko, Subrahmanya Pillai and the Mover, to report within two months.

Seconded by Mr. Mahadeva Aiyar.

Carried.

THE REVENUE RECOVERY REGULATION AMENDMENT BILL.

Mr. Subba Aiyar then introduced a Bill to amend the Revenue Recovery Regulation, I of 1068, and spoke as follows :—

"Sir,

I beg to introduce a Bill to amend the Revenue Recovery Regulation I of 1068. The object of the Bill is to remove the defects in the law regarding the realization of arrears of land revenue. Clause 1 defines 'land holder' and extends its meaning so as to include a real owner of the property though he may not be a registered holder or *Pattadar*. This amendment has been necessitated by the rulings reported in 1 T. L. J., Page 26, and 30 T. L. R., Page 50. In the first case, the question was whether the real lessee of a *Kandukrishy* land could be regarded as a defaulter when the registered lessee was a different individual. Following the decisions reported in 30 Mad. 35, and 33 Mad. 41, it was held that a registered *Pattadar* and none else could be regarded as a defaulter. 1 T. L. J., 26 was followed in 30 T. L. R., 50, where the question was whether the son of a registered holder and a co-owner in possession of a property may be regarded as a defaulter. The decision in these cases has created some difficulty in the realization of arrears. In some instances it may be that the registry holder is dead and, owing to a dispute among the heirs, a transfer of *Patta* may not have been effected. It may also be that though the registry holder is alive the property has been transferred to one or more individuals who have thereupon become the proprietors of the property. As the law stands at present, the Government cannot compel the real owner to pay the revenue. The logical effect of the rulings will also be to put the registry holder and the real owners to inconvenience and difficulty. If the registry holder pays the amount with the hope of recovering it from the real owner in possession of the property, the Courts won't give him relief on the ground that he is the person bound to pay and that his payment should be considered voluntary. This was the ruling in 33 Mad. 41. Similarly, if a *Pattadar* sells his properties under a *Patta* to two individuals and one pays the whole of the tax under the *Patta* and sues the other owner for contribution, he may not get a decree as it may be held that he is not under a statutory obligation to pay the tax. (*Vide* 30 Mad. 35). The law as it stands now is therefore according to the later rulings unsatisfactory. It is therefore thought desirable to amend the definition of 'land holder' so as to include persons other than *Pattadars*. This amendment is quite in keeping with the view expressed in the earlier Madras rulings. In 11 Madras 452 at Page 457, Justice Muthuswamy Aiyar observed as follows :— "As I read Act II of 1864 and the prior Regulations which were consolidated by "it, the arrear of revenue is a debt due by a real owner of the land and it is a charge on the "whole and every part of the holding registered as one estate for purposes of revenue. As to "registered holders, they and their property are declared liable at the option of Government in "order that Government may not be hampered in the collection of revenue by being compelled "to hold a complicated enquiry as to real ownership on each occasion when the revenue is in "arrears. The right which the Government has to proceed against the registered proprietors "does in no way alter the liability of the real owner or of his holding for the arrears of "revenue." This decision was expressly followed in 17 Madras 247 and by Munro J. in 19 Madras Law Journal, Page 275. As the definition of 'land holder' has been amended, and as it is the land holder that is bound to pay the revenue and if he is in arrear he becomes a defaulter, it is not thought necessary to define the term defaulter separately.

Clause 2 gives legal validity to the existing practice whereby the Proverthicar and Village Accountant are both entrusted with the collection of revenue.

Clause 3. Section 31 gives a charge on the land to persons interested if they pay the revenue on behalf of the *Pattadar*. These persons are tenants and mortgagees or other incumbrancers. A person who, *bona fide*, though mistakenly, claims an interest in land may, in case of dispute, pay the revenue to prevent the sale of the land. Though ultimately it may turn out that he has no claim over the land, it is necessary that he should get a charge on the land to protect which he paid the money out of his pocket. The Clause however makes a difference between such persons and mortgagees or other incumbrancers in one respect. While in the case of mortgagees or other incumbrancers it is regarded as a debt due from the mortgagor and makes the mortgagor personally liable, in the case of *bona fide* but unsuccessful claimants no personal remedy is given. To give him such a personal remedy against his successful rival would be "to arm him with a power of oppression of which he would certainly avail himself and which he should not possess."

Clause 5 introduces a new provision by following Section 307 A of the Civil Procedure Code. The owner or any person interested is given a last chance of saving the property.

Clause 8 amends Section 51. The Section as it originally stood required the existence of an arrear as a condition precedent to give the Revenue officer jurisdiction to proceed under the Regulation. If therefore there was in fact no arrears, the Section would not apply, and it was held in 25 T. L. R. 233 that the period of limitation to set aside the sale will be 12 years. As this decision would seriouly affect the operation of the Regulation, the Section was amended by

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Regulation III of 1087. Section 6 of the Regulation lays down the procedure to be adopted before the summary jurisdiction is availed of. It was laid down in 28 T. L. R., 55 that "the preliminary steps are matters of substance and not of mere form and their observance is a condition precedent to give the Revenue officers jurisdiction to sell the land". It was therefore held that the sale was without jurisdiction. The proposed amendment puts the omission to observe the formalities in the same position as the absence of arrears. It is not intended by the amendment to make such omissions mere irregularities but only to curtail the period of limitation. The other Clauses have been sufficiently explained in the Statement of Objects and Reasons and do not therefore call for any particular remark. I therefore beg to move that the principle of the Bill be affirmed."

Seconded by Mr. Mahadeva Aiyar.

Mr. Govinda Menon:—

"Sir,

While supporting in the main the provisions of the Bill, I should be wanting in my duty if I did not lay my emphatic protest against the policy implied in some of the provisions in it. Section 33, as amended, demands payment of the arrears and costs incidental to attachment of immovable property before sunset on the day previous to that appointed for sale of property. This is in contravention of the ordinary law which enables the debtor to pay the amount of his debt before the bidding at the sale is complete. Again, the new Section 33 A (3) does not allow a person to deposit the amount due under protest. This restriction on the liberty of a party is justifiable on no reasonable grounds. Lastly, the substituted Section 59 contains a comprehensive provision entitling Government to recover all dues of whatever kind by the summary process utilised for the collection of revenue. It is true that such a right will exist only in cases where the party has agreed to its use in writing. Those who have dealings with Government officials could easily realise the difficulties and dangers of such a procedure on the part of Government, and its adoption in the Bill is sure to result in serious loss and inconvenience to the parties concerned. This is all that I have to say at present on this Bill, and I would request the Council to consider the above suggestions carefully in giving the Bill a final shape".

Mr. Subba Aiyar, in reply, spoke as follows:—

"Sir,

With regard to the last observation made by my friend Mr. Govinda Menon in respect of Clause 9, I may say that it does not seem to be so unreasonable as my friend would have it. In the existing Regulation, all arrears or advances which are according to a written engagement recoverable as arrears of land revenue may be recovered as arrears. The same principle has been adopted with necessary modifications in the wording so as to suit the existing conditions. With reference to his other observations I may say that they are matters of procedure and will be considered at the Select Committee Stage of the Bill."

Mr. Subba Aiyar's motion was carried.

Mr. Subba Aiyar then moved that the Bill be referred to a Select Committee consisting of Messrs. Mahadeva Aiyar, Velu Pillai and the Mover, to report within three months.

Seconded by Mr. Vieyra.

Carried.

THE NAIR REGULATION AMENDMENT BILL.

Mr. Velu Pillai introduced a Bill to amend the Nair Regulation, I of 1088, so as to provide for Thavazhi partition in Nair Tarawads and, in doing so, he spoke as follows:—

"Sir,

I beg to introduce a Bill to amend the Nair Regulation, I of 1088, making provision for Thavazhi partition in Nair Tarawads. I have set forth my reasons for introducing the measure when I sought the permission of this Council to do so. No elaborate argument is therefore deemed necessary. I venture however to say that the old type of Nair Tarawad has become quite an unworkable institution as the conditions that fostered it are no longer in existence. Corporate property has made way for individual owner-ship and enjoyment in all parts of the world, and if that be due to the march of civilisation and the consequent change in the customs and manners of the people, the inhabitants of the Malabar coast, and especially the Nairs, have outlived the political and social conditions which made a joint family of large dimensions possible or profitable. In the ancient Nair Tarawad, the Karanavan was a despotic ruler. The Anandravers had few recognised rights and were kept under a stern and merciless discipline under the benevolent despotism of the Karanaven. The ties of marriage and sonship were little developed, and a person's fortunes were inexorably intermingled with that of his Tarawad.

In a word, the old Nair had no existence separate from his Tarawad. But the circumstances are entirely different at present. A sense of political security has ushered in an era of individualistic existence. Family life in its true sense began to develop itself, and the notions of wife and children, "their rights" and "his duties," began to dawn upon the Nair's mind. The Karanavan began to realise his responsibility as a father and the Anandravan became accustomed to think of the privileges and duties of a son. A conflict arose between the interest of the Karanavan as a man and his duty as the ruler and the manager of a Tarawad. The History of

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